

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1379 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANDAS SHANKERLAL MODI

Versus

MINESHKUMAR GORDHANDAS MODI

Appearance:

MR MEHUL SHARAD SHAH for Petitioner
DS AFF.NOT FILED (R) for Respondent No. 1
MR SHASHIKANT S GADE for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by the original claimant, who has challenged the order passed by the Motor Accident Claims Tribunal, Mehsana, passed under section 140 of the Motor Vehicles Act, whereby the respondent no.2 herein i.e. the insurer has been absolved from liability to make

payment under the award made by the Tribunal under section 140 of the said Act.

2. When this appeal was taken up for hearing, learned counsel for the appellant sought liberty to delete opponent no.1 (the owner of the motor cycle). Liberty is granted. Accordingly respondent no.1 shall stand deleted.

3. The short point involved in the present appeal is whether a pillion rider, riding behind the driver of a motor cycle is a third party so far as the insurer of the motor cycle is concerned, and whether such pillion rider has a legitimate claim arising out of an accident as against such insurer.

4. The Motor Vehicles Claims Tribunal was clearly in error in holding that such a pillion rider was not a third party and was therefore not entitled to make any claim against the insurer of the motor cycle upon which he was riding as a pillion rider. This position is no longer in controversy in view of the various judicial pronouncements on the subject.

5. In this context I may refer to only two such decisions viz. (1) the decision of the Kerala High Court in the case of United India Insurance Co. Ltd. Vs. Appukuttan, reported in 1995 ACJ 888 and (2) decision of the Karnataka High Court in the case of Oriental Insurance Co. Ltd. Vs. Minaxi, reported in 2000 ACJ 385.

6. In this context, on an interpretation of section 147 of the Motor Vehicles Act, 1988, it has been found and held that the term "any person" covers the pillion rider, and that therefore the third party risk covered even under the "act only" policy would cover the risk of the pillion rider.

7. This legal position could not be contested by learned counsel for the insurer.

8. In the premises aforesaid, this appeal requires to be allowed and is accordingly allowed. Consequently the impugned award is modified to the extent that the insurer (present respondent no.2) shall also be jointly and severally liable to satisfy the award in question. The rest of the award stands confirmed. No order as to costs.
